



City of Seattle

Department of Planning and Development
Diane M. Sugimura, Director

**CITY OF SEATTLE
ANALYSIS AND DECISION OF THE DIRECTOR
OF THE DEPARTMENT OF PLANNING AND DEVELOPMENT**

Application Number: 3002641
Applicant Name: Corey and Diane Rusk
Address of Proposal: 5450 39th Ave. W.

SUMMARY OF PROPOSED ACTION

Shoreline Substantial Development Permit for future construction of a new 429 square foot, 100 foot long pier with grated decking and an attached boat lift and grated float. Project includes installation of seven structural pilings and one mooring pile.

Seattle Municipal Code (SMC) requires the following approvals:

Shoreline Substantial Development Permit: to allow the construction of a moorage pier in an Urban Residential/Conservancy Recreation (UR/CR) Shoreline Environment.
(Section 23.60.020 Seattle Municipal Code)

SEPA – Environmental Determination. (Chapter 25.05 Seattle Municipal Code)

SEPA DETERMINATION: ☐ Exempt ☐ DNS ☐ MDNS ☐ EIS

☒ DNS with conditions

☐ DNS involving non-exempt grading or demolition or involving another agency with jurisdiction.

BACKGROUND INFORMATION

Site Location and Description

The subject site is located at 5450 39th Avenue West on the south shore of Salmon Bay. The property is zoned Single Family 5000. The submerged portion of this site is located in the Conservancy Recreation (CR) shoreline environment. The dry land portion of the site is located in the Urban Residential (UR) shoreline environment. The property is developed with a single family residence on the dry land portion. The site is bounded by single-family residences to the north and south, 39th Avenue West to the west, and Salmon Bay to the east.

The Proposal

The applicant proposes to construct a 429-square-foot pier with an automatic, pier-mounted boat lift in order to provide moorage for her personal recreational boat. The pier will be constructed with two (2) 8-inch diameter steel pilings, four (4) 12-inch diameter steel pilings and three (3) 16-inch diameter steel pilings, one of which will be used for mooring. The pier will utilize grated decking to allow 69 percent light transmission to the water for aquatic habitat. Previously, this application was for a longer pier that would have required a shoreline variance. That proposal was withdrawn and the proposed pier length and size have been reduced so that a variance is no longer required.

Although the proposal is for a pier accessory to a single family use, the fair market value exceeds \$10,000.00. Therefore, the development is not exempt from obtaining a shoreline substantial development permit. Due to the location of the work being over water, environmental review under Seattle's SEPA ordinance is also required.

PUBLIC COMMENT:

Public notice of the applications was published on April 17, 2008. The required public comment period ended on May 16, 2008. One public comment was received from the Muckleshoot Tribe raising concerns about adequate habitat mitigation.

ANALYSIS - SHORELINE SUBSTANTIAL DEVELOPMENT

Section 23.60.030 of the Seattle Municipal Code provides criteria for review of a shoreline substantial development permit and reads:

A substantial development permit shall be issued only when the development proposed is consistent with:

- A. The policies and procedures of Chapter 90.58 RCW;
- B. The regulations of this Chapter; and
- C. The provisions of Chapter 173-27 WAC

Conditions may be attached to the approval of a permit as necessary to assure consistency of the proposed development with the Seattle Shoreline Master Program and Shoreline Management Act.

A. The Policies and Procedures of Chapter 90.58 RCW

Chapter 90.58 RCW is known as the Shoreline Management Act of 1971. It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary incidental rights. Permitted uses in the shorelines shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water.

The Shoreline Management Act provides definitions and concepts, and gives primary responsibility for initiating and administering the regulatory program of the Act to local governments. The Department of Ecology is to primarily act in a supportive and review capacity, with primary emphasis on insuring compliance with the policy and provisions of the Act. As a result of this Act, the City of Seattle adopted a shoreline master program, codified in the Seattle Municipal Code at Chapter 23.60. Development on the shorelines of the state is not to be undertaken unless it is consistent with the policies and provisions of the Act, and with the local master program. The Act sets out procedures, such as public notice and appeal requirements, and penalties for violating its provisions. As the following analysis will demonstrate, the subject proposal is consistent with the procedures outlined in RCW 90.58.

B. The Regulation of Chapter 23.60

Chapter 23.60 of the Seattle Municipal Code is known as the "Seattle Shoreline Master Program." In evaluating requests for substantial development permits, the Director must determine that a proposed use meets the approval criteria set forth in SSMP 23.60.030 (cited above). Development standards of the shoreline environment and underlying zone must be considered, and a determination made as to any special requirements (shoreline conditional use, shoreline variance, or shoreline special use permit) or conditioning that is necessary to protect and enhance the shorelines area (SSMP 23.60.064). In order to obtain a shoreline substantial development permit, the applicant must show that the proposal is consistent with the shoreline policies established in SSMP 23.60.004, and meet development standards for all shoreline environments established in SMC 23.60.152 as well as the criteria and development standards for the shoreline environment in which the site is located, any applicable special approval criteria and the development standards for specific uses.

Each of these elements is evaluated below in the order they are listed in the Shoreline Master Program. The shoreline designations for the area of work are Urban Residential and Conservancy Recreation (UR and CR at SMC 23.60.220).

SMC 23.60.004 - Shoreline Policies

The Shoreline Goals and Policies which are part of the Seattle Comprehensive Plan's Land Use Element and the purpose and location criteria for each shoreline environment designation contained in SMC 23.60.220 must be considered in making all discretionary decisions in the shoreline district. The purpose of the UR and CR environments are stated in SMC 23.60.220.C.6 and C3, respectively. The applicable sections of these regulations to the current proposal are:

- in the Urban Residential Environment to protect residential areas
- in the Conservancy Recreation Environment to protect areas for environmentally related purposes, such as public and private parks, aquaculture areas, residential piers.

The new pier will be located almost entirely overwater, resulting in an increase in overwater coverage that will be mitigated by removal of a wood ramp in the nearshore environment adjacent to the bulkhead, removal of man-made debris on the beach at the property, installation of cobble-gravel mix along length of bulkhead on property, and planting of 550 square feet of native vegetation along the shoreline as well as utilization of grated decking on the pier to allow light transmission to the water for aquatic habitat.

SMC 23.60.064 - Procedures for Obtaining Shoreline Substantial Development Permits

This application has followed the procedural requirements for a Master Use Permit as specified in subsection A. SMC 23.60.064 also provides authority for conditioning of shoreline substantial development permits as necessary to carry out the spirit and purpose of and assure compliance with the Seattle Shoreline Code, Chapter 23.60, and with RCW 90.58.020 (State policy and legislative findings).

SMC 23.60.064C. In evaluating whether a development which requires a substantial development permit, conditional use permit, variance permit or special use authorization meets the applicable criteria, the Director shall determine that:

1. The proposed use is not prohibited in the shoreline environment(s) and underlying zone(s) in which it would be located;

Boat moorage, accessory to a residential use, is a permitted use in the SF-5000 zone. A residential pier is permitted outright in the CR Environment (SMC 23.60.362).

2. The development meets the general development standards and any applicable specific development standards set forth in Subchapter III, the development standards for the shoreline environment in which it is located, and any applicable development standards of the underlying zoning, except where a variance from a specific standard has been applied for; and

The project meets standards for residential piers per SMC 23.60.240. The conformance of the project with the general development standards listed at SMC 23.60.152 is also discussed below.

3. If the development or use requires a conditional use, variance, or special use approval, the project meets the criteria for the same established in Sections 23.60.034, 23.60.036 or 23.60.032, respectively.

No conditional use or variance required.

SMC 23.60.152 - Development Standards for all Environments

These general standards apply to all uses in the shoreline environment. They require that design and construction of all uses be conducted in an environmentally sound manner, consistent with the Shoreline Management Program and with best management practices for the specific use or activity. These general standards of the SMP state, in part, that all shoreline development and uses shall:

- protect the quality and quantity of surface and ground water on and adjacent to the lot and shall adhere to the guidelines, policies, standards and regulations of applicable water quality management programs and regulatory agencies. Best management practices such as paving and berming of drum storage areas, fugitive dust controls and other good housekeeping measures to prevent contamination of land or water shall be required.
- not release oil, chemicals or other hazardous materials onto or into the water.
- be located, designed, constructed, and managed to avoid disturbance, minimize adverse impacts and protect fish and wildlife habitat conservation areas, including but not limited to, spawning, nesting, rearing and habitat areas, commercial and recreational shellfish areas, kelp and eel grass beds, and migratory routes. Where avoidance of adverse impacts is not practicable, project mitigation measures relating the type, quantity and extent of mitigation to the protection of species and habitat functions may be approved by the Director in consultation with state resource management agencies and federally recognized tribes;
- be located, designed, constructed and managed to minimize interference with, or adverse impacts to, beneficial natural shoreline processes such as water circulation, littoral drift, sand movement, erosion and accretion;
- be located, designed, constructed, and managed in a manner that minimizes adverse impacts to surrounding land and water uses and is compatible with the affected area; and
- be located, constructed, and operated so as not to be a hazard to public health and safety.

The proposal, as designed and conditioned below including the proposed mitigation, would not adversely affect the quality and quantity of surface and ground water on and adjacent to the site on a long-term basis. No planned discharge of solid wastes would occur. Spillage of petroleum or diesel products must be avoided and contained should it occur. No intentional release of oil, chemicals, or other hazardous materials shall occur. Erosion would not result from the development. Impacts to fish and wildlife and shoreline processes are minimized. Long-term impacts to surrounding land and water uses are also minimized. No vegetation will be cleared with this proposal. No hazard to public safety or health is proposed by this development. Navigation channels will not be affected. The proposal would not affect existing shoreline stabilization except that man-made debris on the beach will be removed near the existing bulkhead. No submerged public right-of-way or view corridors would be significantly affected. The conditions noted at the end of this report, which are based on the criteria of SSMP 23.60.152, ensure that the project conforms to the goals and regulations of the Seattle Shoreline Master Program. The public interest suffers no substantial detrimental effect from the proposal.

SMC 23.60.204 – Piers and Floats Accessory to Residential Development

These standards regulate the size and location of piers for residential uses. The proposed pier would be consistent with these standards.

SMC 23.60.390 - Development Standards for CR Shoreline Environments

The development standards set forth in the Conservancy Recreation Shoreline Environment relate to minimizing adverse impacts to natural areas and to enhance the enjoyment by the public of those natural areas. The applicant has agreed to provide habitat mitigation in the form of debris removal in the beach area to expose natural substrate in the nearshore environment and improve habitat for migrating salmon. Habitat mitigation for this project will also include installation of a gravel/cobble mix along the bulkhead to improve shallow water habitat for migrating fish and planting of native vegetation along the shoreline to provide shading and food sources for migrating and rearing salmon. Also, the proposed pier will be constructed of a grated decking material to allow light transmission to the water for aquatic vegetation growth and reduced predation potential on migrating salmon.

SMC 23.60.570 – Development standards for the UR Environment

All developments in the UR environment shall be located and designed to minimize disturbance of any critical habitat area. The pier will occupy only about 20 square feet of land in the UR Environment and will not be covering any pervious ground at this location.

The development as proposed and conditioned below will comply with the above shoreline development standards and should have minimal effects on migratory fish routes and do not warrant further conditioning.

As noted above, Seattle's Municipal Code provides criteria for the review and conditioning of shoreline substantial development permits. Thus, as shown in the applicant's development plans the Director has determined that the proposal is consistent with the criteria of SMC 23.60.030A.2 and may be conditionally granted as noted at the end of this decision.

C. The Provisions of Chapter 173-27 WAC

WAC 173-27 establishes basic rules for the permit system to be adopted by local governments, pursuant to the language of RCW 90.58. It provides the framework for permits to be administered by local governments, including time requirements of permits, revisions to permits, notice of application, formats for permits, and provisions for review by the state's Department of Ecology (DOE). Since DOE has approved the Seattle Shoreline Master Program, any project consistent with the criteria and procedures of SMC Chapter 23.60 is also consistent with WAC 173-14 and RCW 90.58.

CONCLUSION

Development requiring a Shoreline Substantial Development Permit can only be approved if it conforms to the policies and procedures of the WAC, RCW and with the regulations of Chapter 23.60, Seattle Shoreline Master Program. The specific standards for development in the shoreline environments will be met by the proposed development.

Pursuant to the Director's authority under Seattle's Shoreline Master Program to ensure that development proposals are consistent with the policies and procedures, and conform to specific development standards of the underlying zone, and having established that the proposed use and development are consistent with the Seattle Shoreline Program, the proposal is approved with the conditions listed below.

DECISION - SHORELINE SUBSTANTIAL DEVELOPMENT

The Shoreline Substantial Development permit is **CONDITIONALLY GRANTED**. Conditions are listed at the end of this report.

ANALYSIS - SEPA

Disclosure of the potential impacts from this project was made in the following documents the Environmental Checklist dated Dec. 12, 2008, the application for Shoreline Substantial Development Permits, and the experience of the lead agency with the review of similar projects form the basis for this analysis and decision.

The SEPA Overview Policy (SMC 25.05.665) clarifies the relationship between codes, policies, and environmental review. Specific policies for each element of the environment, and certain neighborhood plans and other policies explicitly referenced, may serve as the basis for exercising substantive SEPA authority. The Overview Policy states, in part, *"Where City regulations have been adopted to address an environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation"* subject to some limitations. Under such limitations or circumstances (SMC 25.05.665 D) mitigation can be considered. Thus, a more detailed discussion of some of the impacts is appropriate. Short-term and long-term adverse impacts are anticipated from the proposal.

Short-term Impacts

The following temporary or construction-related impacts are expected: temporary increase in noise levels, increase in water turbidity levels, increased levels of fugitive dust and fumes from the construction equipment, disturbance of shorelines and displacement of some fish wildlife species due to increased water turbidity levels and increased noise from the construction activities. Due to the temporary nature and limited scope of these impacts, they are not considered significant (SMC 25.05.794). Although not significant, these impacts are adverse and, in some cases, mitigation may be warranted.

Several adopted codes and/or ordinances provide mitigation for some of the identified impacts. Specifically these are: the Seattle Noise Ordinance (construction noise); and State Air Quality Codes administered by the Puget Sound Air Pollution Control Agency (air quality). In addition Federal and State regulations and permitting authority (Section 10 Permit, 404 Permit from the Army Corps and HPA permit from Washington Department of Fish and Wildlife) are effective to control short-term impacts on water quality. Compliance with these codes and/or ordinances will lessen the environmental impacts of the proposed project.

The proposed construction work will take place in and adjacent to the waters of Salmon Bay. Additionally, construction material will be delivered by barge over-water. With the proposed work taking place in and adjacent to water and the delivery of construction material taking place over-water, there exists the potential for debris and other deleterious material to enter the water during this proposed work. Best management practices (BMPs) will be required to decrease the probability of debris or other deleterious material from entering the water during the proposed work. A turbidity curtain and debris boom will be deployed around the project area during in- and over-water work to contain any debris, suspended sediments, or spills caused by demolition or construction activities. This material should be contained on site and then disposed of at the appropriate upland facility. In-water construction activity will be restricted to appropriate work windows for fish protection set by Washington Department of Fish and Wildlife and the US Army Corps of Engineers.

Construction material and equipment pose some potential danger of water and near shore contamination and shoreline erosion. The contamination from spills could lead to both water quality and aquatic habitat damage. In order to be prepared to provide a fast and effective response to spills or other actions which cause new contaminants to be introduced into the shoreline environment, it is necessary to condition the project to require that prior to commencing construction an emergency containment plan and procedures be developed and all necessary equipment be stocked on the site. It is also warranted to require the use of BMPs to minimize erosion along the shoreline caused by storage and staging construction material in this area.

Construction activities include construction worker commutes, barge trips, the operation of construction equipment and machinery, and the manufacture of the construction materials. These activities themselves result in increases in carbon dioxide and other greenhouse gas emissions which adversely impact air quality and contribute to climate change and global warming. While these impacts are adverse, they are minor in scope and short in duration, and do not warrant mitigation under SEPA

Construction Noise

The project involves installation of eight (8) steel piles. Pile installation is proposed to be done with a vibratory hammer as much as possible. Best Management Practices and noise abatement measures such as cushions and bubble curtains will be utilized in the event impact hammer use is required.

No further SEPA conditioning of potential short-term impacts is warranted.

Long Term Impacts

Long-term or use related impacts are also anticipated from the proposal and include: an increase in overwater coverage by 429 square feet. These long-term impacts are potentially significant without mitigation; therefore, merit a detailed discussion of the impacts and the required mitigation.

Plants and Animals

Chinook salmon, a species listed as threatened under the Endangered Species Act (ESA) in March 1999, are known to inhabit Lake Washington including the proposed project area. Under the City of Seattle's Environmental Policies and Procedures 25.05.675 N (2) it states in part: *A high priority shall also be given to meeting the needs of state and federal threatened, endangered, and sensitive species of both plants and animals.*

This project is proposed to take place in Salmon Bay which is part of the migration corridor and is rearing habitat of chinook salmon from the Cedar River and the other water bodies in Water Resource Inventory Area 8.

Clearly identified long-term impacts on juvenile chinook salmon and the aquatic environment include the increase of overwater coverage and substrate alteration at the site. Overwater coverage in the form of piers and associated structures reduce the amount and quality of natural habitat of juvenile chinook salmon and provides habitat for introduced predator species of juvenile chinook. Measures proposed by the project proponent to mitigate impacts to the ESA listed species and other aquatic wildlife [SEPA checklist 5(d)] include:

- Using grated material in the new pier's decking to allow for light penetration (69 percent) to the aquatic habitat below the decking.
- Removing man-made debris and boulders along the shoreline at the property to expose native substrate in this nearshore habitat area.
- Planting 550 square feet of native vegetation immediately adjacent to the shoreline.
- Installation of cobble-gravel mix along shoreline to improve shallow water habitat conditions for migrating salmon.

Each of these measures is believed to improve habitat conditions for chinook salmon and other juvenile salmonids that utilize the site. Collectively these measures are believed to help reduce dark areas under the pier and increase the availability of nearshore habitat for migration and rearing, which will allow the juvenile salmon to remain in the shallow water during their migration and reduce the juvenile chinooks' vulnerability to predation in the bay environment.

This project is within 400 to 800 feet of a known bald eagle nest, which prompted consultation with Department of Fish and Wildlife. No tree removal, habitat alteration or vegetation removal will occur for this project that would impact eagles using this nest. The project will use vibratory installation methods that will reduce disturbance and will occur outside the sensitive early nesting period, therefore the Department of Fish and Wildlife determined that project will have minimal if any effect on nesting bald eagles.

DECISION – SEPA

This decision was made after review by the responsible official on behalf of the lead agency of a completed environmental checklist and other information on file with the responsible department. This constitutes the Threshold Determination and form. The intent of this declaration is to satisfy the requirement of the State Environmental Policy Act (RCW 43.21.C), including the requirement to inform the public of agency decisions pursuant to SEPA.

- [X] Determination of Non-Significance. This proposal has been determined to not have a significant adverse impact upon the environment. An EIS is not required under RCW 43.21C.030 (2)(C)
- [] Determination of Significance. This proposal has or may have a significant adverse impact upon the environment. An EIS is required under RCW 43.21C.030 (2)(C).

CONDITIONS – SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT, SEPA

Prior to Issuance of the Building Permit

- 1) Spill prevention and response procedures shall be developed prior to commencement of construction and the appropriate material shall be kept at the site for quick response to any toxic spills, such as fuel, at the site. The information shall be provided on the construction plan set.
- 2) A 550 square foot area adjacent to the shoreline shall be enhanced with planting of native vegetation. This area shall be shown on the construction plan set. Final inspection to be performed by DPD Fisheries Biologist Ben Perkowski, who may be contacted at 206-684-0347.
- 3) A Debris Cleanup Plan shall be shown on construction plan set that shows the removal of manmade debris in the beach area.

During Construction:

The following condition(s) to be enforced during construction shall be posted at the site in a location on the property line that is visible and accessible to the public and to construction personnel from the street right-of-way. If more than one street abuts the site, conditions shall be posted at each street. The conditions will be affixed to placards prepared by DPD. The placards will be issued along with the building permit set of plans. The placards shall be laminated with clear plastic or other waterproofing material and shall remain posted on-site for the duration of the construction.

- 4) All boulders, rocks and man-made debris that is located in the submerged area of this property shall be removed. Debris removed shall be disposed in an appropriate upland facility.
- 5) Approximately five cubic yards of cobble-gravel mix with specifications approved by Washington Department of Fish and Wildlife will be installed along entire length of bulkhead.
- 6) Work waterward of ordinary high water shall be restricted to work windows established by Washington Department of Fish and Wildlife and US Army Corps of Engineers.

- 7) Appropriate best management practices (BMPs) shall be employed to prevent material from entering Salmon Bay. BMPs shall include the deployment of a turbidity curtain and debris boom surrounding the project area during in-water and over-water work to contain any debris, suspended sediments, or spills caused by construction activities. Materials to be disposed of shall be contained on site and then be discarded at an appropriate upland facility.
- 8) The use of vibratory hammer for pile installation shall occur as much as possible. Pile installation will occur outside the sensitive early nesting period for nearby bald eagles. Best Management Practices and noise abatement measures such as cushions and bubble curtains shall be utilized in the event impact hammer use is required.
- 9) Care shall be taken by the owner(s), builder(s), or responsible party(s) to prevent toxic materials, petrochemicals and other pollutants from entering surface water during the proposed repair work. Spill prevention and response plan and material shall be kept at the site for quick response to any toxic spills, such as fuel, at the site.
- 10) The appropriate Best Management Practices (BMPs) shall be employed to prevent erosion and sediment from entering Salmon Bay. Any debris that enters the water during construction shall be collected and disposed of in an appropriate upland facility.
- 11) The appropriate equipment and material for hazardous material clean up shall be kept at the site.
- 12) At least 69 percent light shall reach the water under the pier at the completion of the new pier.
- 13) No fascia shall be installed because it blocks natural light from reaching under the pier.
- 14) Any treatment of the steel or aluminum material on this pier shall be non-leaching and non-toxic to the estuarine and marine environment.

For the Life of the Project

- 15) The 550 square foot area adjacent to the shoreline that is enhanced with native vegetation shall be maintained. No pesticides, herbicides or chemical fertilizers shall be used in the shoreline habitat buffer within 100 feet of ordinary high water, including the 550 square foot area that will be enhanced.
- 16) The area of beach exposed for mitigation and waterward from this area shall be kept free of boulders and man-made debris for the life of the project.

Signature: (signature on file)
Ben Perkowski, Fisheries Biologist
Land Use Planner
Department of Planning and Development

Date: April 8, 2010